

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRIAN H. SANTOS,) CASE NO. C16-0434 RSM
Plaintiff,)
v.) ORDER GRANTING DEFENDANT U.S.
U.S. BANK NATIONAL ASSOCIATION,) BANK NATIONAL'S MOTION TO
et al.,) COMPEL
Defendants.)

I. INTRODUCTION

This matter comes before the Court on Defendant U.S. Bank National Association's ("U.S. Bank") Second Motion to Compel Discovery. Dkt. #43. Plaintiff opposes the motion, arguing that in large part it is unnecessary. Dkt. #47. The Court has reviewed the motion, along with the remainder of the record. For the reasons set forth herein, the Court now GRANTS Defendant's motion to compel.

II. BACKGROUND

Plaintiff, Brian Santos, initially filed his Complaint for Damages in King County Superior Court. Dkt. #4. Defendants removed the action to this Court on March 25, 2016. Dkt. #1. Plaintiff alleges that:

3.2 At all times material and relevant hereto, Plaintiff BRIAN H. SANTOS was an active duty member of the United States Air Force.

3.3 At all times material and relevant hereto, Plaintiff's then-wife was also an active duty member of the United States Air Force.

3.4 Defendant US BANK, doing business as US Bank and US Bank Home Mortgage, holds the mortgage to Plaintiff's home located at 19007 SE 2601h Street in Covington, King County, Washington.

3.5 On or about September 1, 2012, Plaintiff BRIAN H. SANTOS spoke with Jordan Clark of Defendant US BANK regarding his active duty status to ensure his home would be protected while he was deployed.

3.6 On said occasion, Jordan Clark assured Plaintiff that he was protected under the Servicemembers Civil Relief Act (SCRA) and no negative action would be taken against him by the bank for any missed mortgage payments.

3.7 On or about September 11, 2012, Jill Payne, E-mail Representative of the Special Loans Department of Defendant US BANK emailed Plaintiff and advised him that the SCRA did apply to his mortgage on the subject property and should he become delinquent on his mortgage payments, the bank could not take action against him.

3.8 On or about September 16, 2012, Plaintiff BRIAN H. SANTOS responded to Jill Payne's email seeking further confirmation that he was fully enrolled in the program ensuring his protection under the SCRA and advised Ms. Payne that Jordan Clark had previously assured him that US BANK, would fully exonerate him for any missed mortgage payments and asked Ms. Payne for confirmation this statement by Jordan Clark was indeed true.

3.9 On or about September 17, 2012, Jill Payne responded to Plaintiff's email and confirmed his accounts with US Bank were "set up in accordance with the Servicemembers Civil Relief Act through [his] September 1, 2014, payment." She went on to state, "... you will not accrue any late charges through this date and we will not report you to the credit bureaus through November 28, 2013." Ms. Payne further confirmed that "[d]uring [Plaintiff's] period of active duty and for nine months thereafter, [he would] not be in danger of foreclosure . . ." and advised him that "[a]s of today, neither loan is being reviewed for foreclosure, so . . . [he was] not going to lose [his] home."

3.10 On or about November 27, 2012, Defendant US BANK, by and through Jessica Brazier, Special Loans Specialist with US Bank's Special Loans Department, sent Plaintiff BRIAN H. SANTOS a letter again confirming his protection under the SCRA based upon his active duty status in the US military.

1 3.11 Defendant US BANK employed Defendant SAFEGUARD
2 PROPERTIES to winterize Plaintiff's Covington home and, upon
3 information and belief, hired Defendant SAFEGUARD PROPERTIES to
4 perform this work less than one month after Plaintiff had received the written
5 confirmation of November 27, 2012, that he was subject to SCRA
6 protections.

7 3.12 Upon information and belief, when Defendant US BANK hired
8 Defendant SAFEGUARD PROPERTIES to winterize Plaintiff's home,
9 Defendant US BANK, by and through its duly authorized agents or
10 employees, informed Defendant SAFEGUARD PROPERTIES that
11 Plaintiff's mortgage was in default and that the subject residence was an asset
12 of the bank and therefore needed winterization to preserve said asset.

13 3.13 Defendant SAFEGUARD PROPERTIES then hired Defendant
14 QUEST PRESERVATION to perform said winterization.

15 3.14 Defendant QUEST PRESERVATION hired Bryan Anderson to
16 complete the winterization of Plaintiff's home in Covington, Washington.

17 3.15 On or about December 28, 2012, Defendant QUEST
18 PRESERVATION issued work order #115592 to Bryan Anderson to
19 winterize the subject property.

20 3.16 On or about December 29, 2012, Bryan Anderson and his sister,
21 Cheryl Anderson, entered Plaintiff's home.

22 3.17 On said occasion, Bryan Anderson replaced the front door locks
23 with a new one so that Defendant SAFEGUARD PROPERTIES would have
24 access to Plaintiff's home.

25 3.18 In the course of winterizing Plaintiff's home, Bryan and Cheryl
26 Anderson unlawfully removed personal property belong to Plaintiff and also
27 caused damage to the home itself.

28 3.19 Upon information and belief, over the course of four days, Bryan
29 Anderson removed numerous items belonging to Plaintiff.

30 3.20 In the course of winterizing Plaintiff's home and removing
31 Plaintiff's personal property from the residence, Bryan Anderson informed
32 Plaintiff's neighbors that Plaintiff's mortgage was in default and was being
33 repossessed by the bank.

34 3.21 Bryan Anderson then pawned and/or otherwise attempted to sell
35 the personal property he stole from Plaintiff's residence.

1 3.22 On or about December 31, 2012, Jessica Brazier again sent a
2 letter to Plaintiff advising him that the bank was issuing him a refund of a late
3 fee due to his protection under the SCRA.

4 3.23 On or about January 4, 2013, Bryan Anderson opened a bank
5 account with Defendant US BANK, via a US Bank branch located in
6 Washington State, with a check he obtained from selling Plaintiff's personal
7 property.

8 3.24 On or about February 24, 2013, Plaintiff BRIAN H. SANTOS,
9 having been granted a one-week leave from him deployment in Korea,
10 arrived at the Covington home and discovered his key no longer worked to
11 unlock the front door. Unable to get into his home, Plaintiff called 911, who
12 advised him to contact his bank.

13 3.25 Plaintiff BRIAN H. SANTOS contacted Defendant US BANK
14 the next day, February 25, 2013, and notified said Defendant, by and through
15 its duly authorized employee(s) and/or agent(s) of the violation of Defendant
16 US BANK'S prior guarantees that he was protected by the SCRA and also
17 providing notice to said Defendant that many personal items had been stolen
18 from his residence.

19 3.26 Upon information and belief, his file and his corresponding claim
20 for damages was transferred to Defendant US BANK'S Loss Draft
21 Processing Center, a division of US Bank.

22 3.27 On or about February 28, 2013 and again on or about March 1,
23 2013, Plaintiff received emails from Defendant US BANK'S Loss Draft
24 Processing Center, confirming receipt of his claim and advising Plaintiff it
25 was currently being reviewed.

26 3.28 On or about March 2 or 3, 2013, Gregg Speer, Sr., Vice President
27 of Residential Homes Default Counseling, a division of Defendant US
28 BANK, called Plaintiff and promised him that the bank "would make this
right" and further promised immediate financial assistance to Plaintiff to
offset the costs and losses Plaintiff had suffered as a result of the wrongful
pre-foreclosure actions taken by Defendant US BANK.

3.29 After having admitted the pre-foreclosure actions previously
taken by Defendant US BANK were wrongful and should not have occurred,
Defendant US BANK, by and through US Bank's Residential Mortgage
Default and Management Division, sent Plaintiff another Pre-Foreclosure
Notice on or about June 19, 2013.

3.30 Around the time Defendant US BANK sent Plaintiff the Pre-
Foreclosure Notice in June of 2013, Plaintiff's neighbors contacted him to let

1 him know that another home preservation company had been seen on
2 Plaintiffs property.

3 Dkt. #2 at ¶¶ 3.2-3.30.

4
5 As a result, Plaintiff brought claims against Defendant U.S. Bank for Violation of the
6 Consumer Protection Act and Fraud, and against all Defendants for Violation of the
7 Servicemembers Civil Relief Act, Negligence, Negligent Infliction of Emotional Distress,
8 Intentional Infliction of Emotional Distress, and Vicarious Liability. *Id.* at ¶¶ 4.1-10.9.

9 Prior to the discovery deadline of February 1, 2017, Defendants filed a motion to compel
10 responses to written discovery and the deposition of Plaintiff. Dkt. #16. That motion was noted
11 for consideration by the Court on January 20, 2017. *Id.* Plaintiff then filed a motion for a stay
12 of this matter pursuant to the Servicemembers Civil Relief Act (“SCRA”), and sought a stay until
13 May of 2018. Dkt. #24.

14 On February 14, 2017, the Court granted Plaintiff’s motion in part and stayed these
15 proceedings until August 18, 2017. Dkt. #28. The Court also struck Defendant’s motion to
16 compel, subject to renewal once the matter proceeded. *Id.*

17 On August 16, 2017, Plaintiff moved for another stay. Dkt. #32. Although the Court
18 found there were deficiencies with the motion, in abundance of caution, the Court granted a stay.
19 Dkt. #39. However, the Court stayed the matter only until November 10, 2017. *Id.* The Court
20 also informed the parties that:

21 . . . If, by that date, an application for additional stay is filed by Plaintiff
22 under 50 App. U.S.C. § 522(d)(1), that application shall again contain the
23 information required under 50 App. U.S.C. § 522(b)(2), including a letter
24 or other communication from Plaintiff’s commanding officer. **Further,**
25 **Plaintiff is warned that if he fails to comply with the filing**
26 **requirements set forth in this Court’s Local Civil Rule 7, and fails to**
27 **comply with the requirements of the SCRA in their entirety, the**
28 **Court will deny such a motion. Plaintiff has more than 60 days to**
comply with his statutory requirements and the Court expects that

both he and his counsel will prepare for any future motion with the professional attention it deserves.

2. The Clerk will issue an Amended Scheduling Order once the stay is lifted in this matter. Further, once the stay is lifted, only those case deadlines that had not passed as of the date of the Court's initial stay Order (2/14/2017) will be re-scheduled. With the exception of the discovery at issue in Defendant's prior motion to compel (Dkt #16), no further discovery shall be taken once the stay is lifted unless otherwise ordered by the Court.
3. As noted in the Court's prior stay Order, nothing precludes Defendant from filing a subsequent motion to compel once the stay is lifted should that become necessary.

Dkt. #39 at 8-9 (bold in original; footnote omitted).

No further motions for stay have been filed. Accordingly, the stay has expired, and Defendant's renewed motion to compel is ripe for review.

III. DISCUSSION

A. Stay Has Expired

As an initial matter, the Court formally lifts the stay in this matter. The stay expired on November 10, 2017, and Plaintiff has filed no further motion to stay this matter. *See* Dkt. #39 at 8. Accordingly, this matter will now proceed and the Court will issue an Amended Scheduling Order setting forth the remaining pre-trial deadlines.

B. Standard for Motions to Compel

A party may move to compel discovery if the movant has in good faith conferred with the party opposing discovery to obtain the requested discovery without the court's intervention. *See* Fed. R. Civ. P. 37(a)(1). The moving party bears the burden of demonstrating that the information it seeks is relevant and that the responding party's objections lack merit. *See Bluestone Innovations LLC v. LG Elecs., Inc.*, No. C-13-01770-SI (EDL), 2013 U.S. Dist. LEXIS 171861, 2013 WL 6354419, at *2 (N.D. Cal. Dec. 5, 2013). The party must therefore "inform

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1 the Court which discovery requests are the subject of the motion to compel, and, for each disputed
2 response, why the information sought is relevant and why the responding party's objections are
3 not meritorious." *Adams v. Yates*, No. 1:10-cv-0671-AWI-MJS, 2013 U.S. Dist. LEXIS 157111,
4 2013 WL 5924983, at *1 (E.D. Cal. Nov. 1, 2013).

5 A party may "obtain discovery regarding any nonprivileged matter that is relevant to any
6 party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1).
7 Whether discovery is proportional to the needs of the case hinges on "the importance of the issues
8 at stake in the action, the amount in controversy, the parties' relative access to relevant
9 information, the parties' resources, the importance of the discovery in resolving the issues, and
10 whether the burden or expense of the proposed discovery outweighs its likely benefit." *Id.* The
11 court must limit discovery that is not proportional to the needs of the case. *See Fox v. State Farm*
12 *Ins. Co.*, No. C15-0535RAJ, 2016 U.S. Dist. LEXIS 9056, 2016 WL 304784, at *1 (W.D. Wash.
13 Jan. 26, 2016). The court has "broad discretion to limit" such discovery. *Romero v. Securus*
14 *Techs., Inc.*, No. 16-cv-1283-JM-MDD, 2017 U.S. Dist. LEXIS 170976, 2017 WL 4621223, at
15 *1 (S.D. Cal. Oct. 16, 2017).

19 **C. Discovery Sought**

20 Defendant U.S. Bank asks the Court to issue an Order: (1) compelling Plaintiff to make
21 himself available for a deposition in this District within 60 days; (2) compelling Plaintiff to
22 immediately provide full and complete answers to the Bank's interrogatories and requests for
23 production; and (3) awarding the Bank its reasonable fees and costs for bringing this Motion and
24 its prior motion to compel. Dkt. #43 at 2. The Court will grant this motion in part.

26 On September 16, 2016, Defendant served Plaintiff with Discovery Requests. Dkt. #17,
27 Ex. A. Thus, Plaintiff's deadline to serve his responses was October 17, 2016. Fed. R. Civ. Proc.
28

1 33(b)(2) and 34(b)(2)(A). Plaintiff did not respond by that date, nor did he contact Defendant to
2 seek and extension of time to respond. Dkt. #17 at ¶ 4. After that date, defense counsel engaged
3 in discussions with Plaintiff's counsel, and ultimately agreed to an extension of time to respond
4 until November 14, 2016, provided that such responses would be without objections and also
5 informally include other information. Dkt. #17 at ¶ 10 and Ex. F thereto. Plaintiff provided
6 discovery responses on November 14, 2016, but those responses did not comply with counsel's
7 agreement. Dkt. #17 at ¶¶ 12-13. After additional meet and confers between counsel, Plaintiff
8 provided additional responses; however, the supplemental responses still did not cure the
9 deficiencies identified by defense counsel. Dkt. #17 at ¶¶ 16 - 21 and Exs. L, M, N, O, P, Q, R,
10 T and U thereto. Additionally, Plaintiff failed to provide any dates that he would be available
11 for his deposition. Dkt. #17 at ¶ 22. Since the filing of Defendant's first motion to compel,
12 which was stricken during the stay, Plaintiff has failed to provide additional discovery responses,
13 and provided deposition dates only after the instant motion was filed. Dkt. #44 at ¶¶ 3-13 and
14 #45 at 2.

17 As an initial matter, “[i]t is well established that a failure to object to discovery requests
18 within the time required constitutes a waiver of any objection.” *Richmark Corp. v. Timber
19 Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir 1992) (quoting *Davis v. Fendler*, 650 F.2d
20 1154, 1160 (9th Cir.1981). Having reviewed the record in this matter, the Court finds that
21 Plaintiff did not respond to discovery requests in a timely manner and did not comply with
22 subsequent agreements between counsel for the production of discovery. Therefore, any
23 objections have been waived. As a result, Plaintiff's arguments that the discovery sought by
24 Defendant is not relevant are without basis. *See* Dkt. #47 at 4-7. Moreover, Plaintiff fails to
25 address the standard set forth in the current Federal Civil Rule regarding discovery requests, and
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27
28

1 does not address Defendant's assertions that the requested discovery is relevant to its defenses.
2
3 See *id.* and Fed. R. Civ. Proc. 26(b)(1). Accordingly, the Court will grant Defendant's request
4 for an order compelling Plaintiff to withdraw any objections and provide full and complete,
5 verified responses to Defendant's interrogatories and requests for production.

6
7 Turning to Defendant's request that Plaintiff provide a date certain for his deposition, the
8 Court will also grant that request. Plaintiff argues that such an Order is not necessary because
9 he has informed defense counsel that he is available on any day between February 19 and 21,
10 2018. Dkts. #45 at 2 and #47 at 2-3. However, the Court notes that Plaintiff does not assert that
11 he has been granted leave during that time. In fact, he qualifies those dates with the statement
12 that he is available "unless my command withdraws permission, does not grant, or revokes my
13 requested leave." Dkt. #45 at 2 (emphasis added). This statement also fails to comply with the
14 spirit of the Court's prior Order, wherein the Court informed Plaintiff that he "shall inform the
15 Court whether he indeed requested leave and whether that request was granted or denied." See
16 Dkt. #39 at 9. The Court will take Plaintiff at his word that he is available on the dates he has
17 provided; however, the Court finds an Order directing Plaintiff to appear for his deposition on
18 those dates is also in order. Plaintiff is warned that once a subpoena is issued, his failure to
19 appear on the noticed date may subject him to sanctions, unless he has received prior permission
20 not to appear from defense counsel or this Court.

21
22 Finally, the Court will grant Defendant's request for attorney's fees. Federal Rule of
23 Civil Procedure 37(a)(5)(A) requires the Court to grant the moving party's expenses in making
24 the motion if the motion is granted. The Court finds no reason not to grant Defendant's request
25 given the history of this matter. Accordingly, the Court shall award Defendant its attorney's fees
26 related to its motion to compel.
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IV. CONCLUSION

Having reviewed Defendant's motion, the opposition thereto and reply in support thereof, along with the parties' Declarations and exhibits and the remainder of the record, the Court hereby finds and ORDERS:

1. Defendant's Motion to Compel (Dkt. #43) is GRANTED.
2. No later than twenty (20) days from the date of this Order, Plaintiff shall withdraw his objections to Defendant's discovery requests and produce full and complete, verified responses to those requests. Should Plaintiff fail to comply with this Order, he may be subject to sanctions. Further, nothing in this Order precludes Defendant from moving for additional discovery should it believe such discovery is warranted after receiving Plaintiff's responses.
3. Defendant shall issue a deposition subpoena to Plaintiff for one of the dates he has provided (February 19-21, 2018), and Plaintiff shall appear for his deposition on that date unless otherwise excused by Defendant or this Court.
4. Defendant's request for attorney's fees and costs is GRANTED. Defendant shall file a Supplemental Motion for Attorney's Fees, supported with a Declaration of its fees associated with its Motions to Compel (both the first and the second) **no later than fourteen (14) days from the date of this Order.** That motion shall be noted for the second Friday after it is filed. Plaintiff may file a Response no later than the Monday before the noting date, addressing only the reasonableness of the fees requested. No Reply shall be filed.
5. The Clerk SHALL issue an Amended Scheduling Order. The only remaining pre-trial deadlines include those for: dispositive motions, 39.1 mediation, Motions in

1 Limine, the Pretrial Order, trial briefs and Proposed Findings of Fact and
2
3 Conclusions of Law.

4 DATED this 20th day of December 2017.

5 
6 RICARDO S. MARTINEZ
7 CHIEF UNITED STATES DISTRICT JUDGE